

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

WALTER THURMAN,

Defendant-Appellant.

UNPUBLISHED

September 30, 2003

No. 241213

Wayne Circuit Court

LC No. 01-136583-CZ

Before: Smolenski, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendant appeals by right from the trial court's April 22, 2002 order entitling plaintiff to ninety percent of defendant's assets as partial reimbursement for the cost of his incarceration. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant first argues that this action is barred by the doctrine of res judicata because the trial court already decided that plaintiff was not entitled to defendant's assets. Whether an action is barred by res judicata is a question of law that we review de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999). After defendant was re-incarcerated in 1997,¹ plaintiff moved for reimbursement under the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 *et seq*, for the cost of his care, to be paid from defendant's assets in his prison account.² In April 1998, this motion was denied without prejudice because plaintiff failed to establish its right to relief as it did not address defendant's counter-arguments.³ Because the actual merits of the case were not litigated, the doctrine of res

¹ In 1991, defendant was convicted of several offenses and sentenced to prison. In 1995, his convictions were overturned and defendant was released from custody. Subsequently, defendant was retried and reconvicted. Defendant returned to prison on June 16, 1997.

² In 1994, plaintiff successfully sought reimbursement from defendant's assets in a civilian bank account.

³ Specifically, the court stated:

On the basis of the record as made and the arguments of the parties, it would appear that any such motion presented by the plaintiff take cognizance of defendant's arguments to the effect
(continued...)

judicata does not apply to this action. See *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999).

Defendant next argues that the trial court erred in entering the final order without making findings of fact. First, we note that specific findings of fact were not required in this case. MCR 2.517(A)(4); MCL 800.404. Second, while the court did not specifically address defendant's arguments in its April 22, 2002 order, it implicitly found that this action was not barred by res judicata and defendant's assets in his prison account could be appropriated for reimbursement under the SCFRA. Third, to the extent that defendant is asserting that any of the reasons underlying the court's prior dismissal still exist, we find defendant's claim to be without merit.

Defendant's incarceration status appears relatively certain given that his 1997 convictions were affirmed on appeal and leave to appeal to our Supreme Court was denied.⁴ Also, in support of its complaint, plaintiff filed an affidavit recomputing defendant's cost of care taking into consideration the two-year period from June 1995 to June 1997 that defendant was not in custody. Defendant was given an opportunity, and seized it, to respond to plaintiff's complaint and submit his own evidence.⁵ The SCFRA defines "assets" as

property, tangible or intangible, real or personal, belonging to or due a prisoner or former prisoner including income or payments to such prisoner from social security, worker's compensation, veteran's compensation, pension benefits, previously earned salary or wages, bonuses, annuities, retirement benefits, or from any other source whatsoever [MCL 800.401a(a).]

The only exceptions are the prisoner's residence and the prisoner's monies earned while working for the correctional industries. *Id.* Defendant does not contend that any money in his prison account falls under either of these exceptions. Finally, defendant's pension benefits are apparently being deposited in defendant's prison account. Once defendant receives these monies

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that: 1) the original conviction was overturned – such condition might require a recomputation of the amount due for reimbursement (e.g., in the event the time of incarceration had changed), 2) the argument that the \$13,186.00 presently on account inured to the prisoner's benefit before the conviction which now accounts for his present incarceration, and, thus, the State is not entitled to such amount, and 3) whether or not the State's claim for defendant's pension benefit is circumscribed by ERISA.

Inasmuch as movant has failed to address the foregoing, and, thus, establish its right to relief, its motion shall be denied, but without prejudice.

⁴ For the sake of completeness, we note that defendant has a pending claim in federal court for a writ of habeas corpus.

⁵ The court denied defendant's writ of habeas corpus ad testificandum, pursuant to *Hall v Hall*, 128 Mich App 757; 341 NW2d 206 (1983), only after defendant filed several responsive pleadings outlining his counter-arguments.

they are no longer protected under ERISA,⁶ and, therefore, are subject to appropriation under the SCFRA. *State Treasurer v Abbott*, 468 Mich 143, 159-160; 660 NW2d 714 (2003).

Affirmed.

/s/ Michael R. Smolenski

/s/ Jane E. Markey

/s/ Kurtis T. Wilder

⁶ Employment Retirement Income Security Act, 29 USC 1001 *et seq.*